



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

████████████████████
Donna W.,¹
Complainant,

v.

Anthony Foxx,
Secretary,
Department of Transportation,
Agency.

Request No. 0520160522

Appeal No. 0720160002

Hearing No. 420-2012-00362X

Agency No. 2011-24148-MARAD-01

DECISION ON REQUEST FOR RECONSIDERATION

The Agency timely requested reconsideration of the decision in Donna W. v. Dep't of Transp., EEOC Appeal No. 0720160002 (Aug. 17, 2016). EEOC Regulations provide that the Commission may, in its discretion, grant a request to reconsider any previous Commission decision where the requesting party demonstrates that: (1) the appellate decision involved a clearly erroneous interpretation of material fact or law; or (2) the appellate decision will have a substantial impact on the policies, practices, or operations of the agency. See 29 C.F.R. § 1614.405(c).

On August 26, 2011, Complainant filed a formal complaint alleging that the Agency discriminated against her based on sex, age, and in reprisal for prior protected EEO activity when she was terminated from her temporary position of Parent Program Director on February 14, 2011, and not selected for the position of Parent Program Director advertised under Vacancy Announcement No. MARAD.NNA-2011-0017.

Following an investigation, Complainant was provided with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing, which was held by the AJ on April 9, 2013.

On July 24, 2015, the AJ issued a decision finding that Complainant was subjected to age discrimination when she was not selected for the position at issue. To remedy the discrimination, the AJ ordered the Agency to pay Complainant \$194,695.00 in back pay and “not less than \$227,112.00” in front pay.

The Agency subsequently issued a final order rejecting the AJ’s finding of discrimination and the relief ordered and appealed to the Commission. In Donna W. v. Dep’t of Transp., EEOC Appeal No. 0720160002 (Aug. 17, 2016), the Commission reversed the Agency’s final order and remanded the matter for remedial action. The Commission noted, however, that the AJ improperly awarded Complainant front pay.

In its request for reconsideration, the Agency expresses its disagreement with the previous decision and reiterates arguments previously raised in its appeal. The Commission emphasizes that a request for reconsideration is not a second appeal to the Commission. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110) (Aug. 5, 2015), at 9-18; see, e.g., Lopez v. Dep’t of Agric., EEOC Request No. 0520070736 (Aug. 20, 2007). Rather, a reconsideration request is an opportunity to demonstrate that the appellate decision involved a clearly erroneous interpretation of material fact or law, or will have a substantial impact on the policies, practices, or operations of the Agency. The Agency has not done so here.

After reviewing the previous decision and the entire record, the Commission finds that the request fails to meet the criteria of 29 C.F.R. § 1614.405(c), and it is the decision of the Commission to DENY the request. The decision in EEOC Appeal No. 0720160002 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request. The Agency shall comply with the Order as set forth below.

ORDER

Within **sixty (60) calendar days** of the date this decision is issued, the Agency is ordered to take the following remedial action to the extent that it has not done so:

- 1) Provide Complainant a back pay award in the amount of \$194,695.00.
- 2) Provide EEO training to the responsible selecting officials and human resources staff involved in this matter, focusing on the Agency’s responsibilities under the ADEA.
- 3) Post the notice referenced in the paragraph below entitled “Posting Order.”

- 4) Submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision."

POSTING ORDER (G0914)

The Agency is ordered to post at its U.S. Merchant Marine Academy (USMMA), in Kings Point, New York copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency **within 30 calendar days** of the date this decision issued, and shall remain posted for **60 consecutive days**, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer at the address cited in the paragraph entitled "Implementation of the Commission's Decision," **within 10 calendar days** of the expiration of the posting period.

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

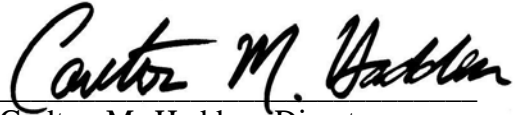
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the

time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:

A handwritten signature in black ink that reads "Carlton M. Hadden". The signature is written in a cursive style and is positioned above a horizontal line.

Carlton M. Hadden, Director
Office of Federal Operations

December 13, 2016

Date